

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement</u> STATEMENT NUMBER <u>5.40</u>
SUBJECT: DNA COLLECTION PROCEDURES PROPONENT: <u>John Vinson, Legal Counsel</u> <i>Name/Title</i> <u>Attorney General Off. 271-2859</u> <i>Office Phone #</i>	EFFECTIVE DATE <u>12/15/07</u> REVIEW DATE <u>08/01/08</u> SUPERSEDES PPD# <u>6.26</u> DATED <u>02/01/02</u>
ISSUING OFFICER: <u>William Wrenn, Commissioner</u>	DIRECTOR'S INITIALS _____ DATE _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page	

- I. **PURPOSE:**
To establish guidelines for the collection of DNA specimens as required under RSA 651-C:2 (attachment 1)
- II. **STATUTORY AUTHORITY:**
RSA 651-C:2 DNA Analysis Required.
 Upon intake or prior to the release of any inmates after conviction for the commission of any offense defined in **RSA 651-C:2**, VIII or IX (attachment 2), or commission of a similar offense prohibited by federal law or the laws of another state, or release for any other reason, or prior to the release of any juvenile offender after a finding of delinquency, such persons shall have a DNA sample taken for DNA analysis to determine identification characteristics specific to the person.
- III. **APPLICABILITY:**
To all staff, probationers/parolees and inmates
- IV. **POLICY:**
It is the policy of the Department of Corrections to obtain for the Department of Safety specimens for DNA testing from all inmates convicted pursuant to RSA 651-C:1 who were convicted or adjudicated delinquent for sexual offenses on or after August 2, 1996, as well as those incarcerated for a sexual offense as of August 2, 1996. In addition, persons incarcerated or on probation or parole for a violent crime as of July 1, 2003 and persons convicted/adjudicated delinquent of a violent crime on or after that date must submit to testing.
- V. **PROCEDURE:**
- A. Institutions
 1. Inmates will be given notice of RSA 651-C:1 during the intake process.
 2. Reception & Diagnostic staff (R & D) will determine who is required to provide a sample

- a. The warden/designee will be responsible for sending inmates a letter citing RSA 651-C.
- b. The inmate's DNA sample is collected upon intake in R & D after the R & D Unit Manager reviews the sentencing paperwork.
- c. The R & D Unit Manager/designee will collect the sample in accordance with the Department of Safety buccal test kit instructions.
- d. The R & D Unit Manager will submit a list of all those inmates who refuse to supply a specimen to the Department of Safety and DOC Legal Services.
- e. The Department of Safety will obtain a court order for mandatory specimen collection for those inmates who refuse to provide a sample.
- f. Inmates will be provided documentation of compliance with specimen collection.
- B. For Offenders Under Field Services Supervision
 - 1. CORIS will generate a roster of all applicable offenders for each Chief Probation and Parole Officer (CPPO) and the R & D Unit Manager. Probation/Parole Officers (PPOs) will monitor their caseloads to ensure all appropriate offenders provide samples, including out of state transfer cases.
 - 2. The R & D Unit Manager will coordinate sample collection with the CPPOs. The collection will take place at the district office or a mutually agreed upon site. The supervising PPO shall enter the collection date in CORIS.
 - 3. The R & D Unit Manager/designee will collect the sample. In the event an offender refuses to comply, a 30-day notice will be given to the offender. **If the offender refuses to comply after 30 days, the Department of Safety will be notified and will obtain a sample via a search warrant.**
- C. **Department of Corrections' staff is authorized, per RSA 651-C:2 to use such means as are reasonable necessary to detain, restrain and collect a DNA sample from an individual who refuses to cooperate in the collection of a sample..**
- D. Testing Material
 - 1. The Department of Safety will provide buccal swab collection kits in a self-enclosed envelope.
 - 2. The offender information must be filled out on the DNA database information card.
 - 3. The offender must provide thumb prints on the card.
 - 4. The offender will swab the inside of their cheek and hand the swab back to the staff member collecting the sample. The swab will be placed on the pink buccal sample card for DNA transfer. The card will turn white when the required amount of DNA has been successfully transferred.
 - 5. The indicator paper needs approximately 30 minutes to dry out, at which time it is placed in a zip lock bag with the identification card. The staff member collecting the sample shall sign and date the shipping seal on the exterior of the envelope. The envelope is mailed to the Department of Safety lab via messenger mail.
 - 6. A list of all people tested will be maintained by the R & D Unit Manager for record keeping purposes.

REFERENCES:

Standards for the Administration of Correctional Agencies,
Second Edition Standards

Standards for Adult Correctional Institutions,
Fourth Edition Standards

Standards for Adult Community Residential Services,
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services,
Third Edition Standards

Other
RSA 651-C

Section 651-C:2**651-C:2 DNA Analysis Required. –**

I. Upon intake or prior to the release of any offender after conviction for the commission of any offense defined in RSA 651-C:1, VIII or IX, or commission of a similar offense prohibited by federal law or the laws of another state, whether on probation, conditional or unconditional release, completion of sentence, or release for any other reason, or prior to the release of any juvenile offender after a finding of delinquency, such person shall have a DNA sample taken for DNA analysis to determine identification characteristics specific to the person.

II. The analysis shall be performed under the direction of the division, following procedures in conformance with the federal "DNA Identification Act of 1994". Identifying characteristics of the resulting DNA profile shall be stored by the division in a DNA database compatible with and maintained by the CODIS system. Information in the database shall be made available only as provided in RSA 651-C:3.

III. The division shall prescribe procedures compatible with the Federal Bureau of Investigation's requirements for the CODIS program, to be used in the collection, submission, identification, analysis, storage, and disposition of DNA samples and DNA records obtained pursuant to this subdivision.

IV. The division may contract with third parties for the purposes of this subdivision. Any DNA sample sent to third parties for analysis shall be coded to maintain confidentiality concerning the donor of the sample.

V. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts stated in the analysis.

VI. A law enforcement officer may use such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of a sample.

VII. If the initial DNA sample collected from an individual is found to be deficient, a new sample shall be collected.

VIII. Any person required under this chapter to submit a DNA sample, including a juvenile offender who is required to submit a DNA sample prior to the juvenile's eighteenth birthday, who knowingly refuses to submit such sample for a period of 30 days after receiving notice from the division, the department of corrections, probation, parole, or other authorized representative of law enforcement shall be guilty of a class A misdemeanor.

IX. Any entry into the database which is found to be erroneous shall not prohibit law enforcement officials from the legitimate use of the information in the furtherance of a criminal investigation.

X. Any authorized individual collecting a DNA sample shall be immune from civil liability, provided such person acts with reasonable care under the circumstances.

Source. 2002, 183:1, eff. May 15, 2002.

Section 651-C:1

651-C:1 Definitions. – In this chapter:

I. "CODIS" means the Combined DNA Index System, the FBI's national DNA identification index system.

II. "Department" means the department of safety.

III. "Division" means the division of state police, department of safety.

IV. "DNA" means deoxyribonucleic acid.

V. "DNA record" means the DNA identification information stored in the state DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the objective form of the DNA analysis test and may include numerical representation of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and similar characteristics obtained from a DNA sample which are of value in establishing the identity of individuals. A DNA record may not specify the presence, absence, or alteration of any gene or chromosome.

VI. "DNA sample" means a blood, tissue, hair follicle, or other biological sample provided by any person or submitted to the division pursuant to this subdivision for analysis or storage or both.

VII. "FBI" means the Federal Bureau of Investigation.

VIII. (a) "Sexual offender" means a person who has been convicted of any violation of:

(1) RSA 632-A:2, RSA 632-A:3, or RSA 632-A:4; or

(2) A law of another state or the federal government reasonably equivalent to a violation listed in subparagraph (1).

(b) "Sexual offender" also means a juvenile who has been found delinquent because of actions which, if the juvenile were an adult, would be crimes under RSA 632-A:2, 632-A:3, or 632-A:4. In the case of a juvenile offender, a DNA sample shall be provided prior to the juvenile's eighteenth birthday, or in the case of a person sentenced under RSA 169-B:4, prior to such person's nineteenth birthday.

IX. "Violent crime" means a capital, first degree, or second degree murder, attempted murder, manslaughter, first degree assault, second degree assault, felony arson, kidnapping, robbery, felony burglary, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, as these crimes are defined by statute.

Source. 2002, 183:1, eff. May 15, 2002.